

Why We Were Right and They Were Wrong

Agreements are complied with and executed properly. In other words, they too have the responsibility to ensure that panel decisions are complied with quickly and entirely.

Unfortunately, the degree to which international trade agreements are complied with is often plagued by the "paradox of international law." Even though countries have been jumping on the bandwagon to sing the praises of "the rule of law," "stringent international rules," and "effective international regimes," they have been hesitant to allow those laws, rules, and regimes to override domestic ones. Desires for protecting sovereignty and independent decision-making ability have often taken precedence over enforcing and complying with international rules and institutions. International rules are, after all, only as good and as strong as the will of the member states to uphold them.

Chapter 19 panels are not exempt from the paradox of international law as the *Softwood Lumber* and *Fresh, Chilled, and Frozen Pork* disputes clearly attest. Political manipulation has caused American administrative agencies and officials in the executive branch to bow to national concerns regarding sovereignty and protectionism instead of to broader continental goals of unobstructed, politically neutral free trade. The problem has not been as acute in Canada, but has the potential to develop as well. Members of the Canadian Steel Producers Association, for example, are calling for more stringent, "American-style" trade remedy laws to guard them from foreign producers. The Softwood Lumber Agreement of April, 1996 also gave the media the impression that Canadian lumber producers and federal and provincial governments had given up on the Chapter 19 system and returned to diplomatic negotiations to settle bilateral disputes.⁹⁸

Consequently, the issue of compliance in the face of the paradoxical nature of international law leads to an obvious, but vital policy implication for Canadian trade policy-makers. Canadians must constantly advocate the importance of rules and effective institutions in international trade. Canadians must always remind their trading partners, especially those south of the 49th parallel, that jointly formulated rules were put in place, agreed to, and must be preserved and promoted. Canadians must never give their trading partners the option of compliance. Compliance is essential to a prosperous, well-functioning, free trade agreement.

One means to encourage compliance is to extol the strengths of the Chapter 19 system. Ad hoc, binational panels have been able to issue timely, well-reasoned decisions that respect domestic laws and administrative practices. Some have suggested that a permanent panel would be a more appropriate forum for reviewing AD/CVD laws. However, in light of the successful experience with Chapter 19 thus far, the structure of panels should not be changed. The ad hoc panels have issued excellent, thorough decisions because panelists have been chosen for their expertise on

⁹⁸ See, for example, Jeffrey Simpson, "When it comes to trade the Americans just never give up," *Globe and Mail* (February 16, 1996); "How committed is Ottawa to the principles of free trade?" *Financial Post* (February 23, 1996).